

**Federal Defenders
OF NEW YORK, INC.**

Southern District
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March 13, 2020

VIA ECF

Honorable Vernon S. Broderick
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

**Re: *United States v. Saipov*,
(S1) 17 Cr. 722 (VSB)**

Dear Judge Broderick:

We write seeking a continuance of the trial date, and the government does not oppose our request. The parties propose that the Court vacate the April 20, 2020 trial date and set a deadline for a written status update by April 2, 2020. At that point, the parties will update the Court with their position on a new trial date. The defense will request a date no earlier than September 2020. The government does not yet take a position on a new date.

As discussed during the two conferences held on Wednesday, March 11, 2020, the parties and the Court are all aware of the developing threat posed by COVID-19 and its impact on normal life in New York City and beyond. The President has declared COVID-19 a national emergency and the Bureau of Prisons has cancelled all legal visits at all of its facilities for at least the next 30 days. The parties agree that the prospect of additional citywide restrictions to curb the spread of COVID-19 makes it impossible to proceed with the existing April 20, 2020 trial date.

COVID-19 also presents obstacles for our defense preparation. The defense still needs to undertake significant domestic and international air travel to finish investigations, prepare lay and expert witnesses' testimony, and continue gathering information necessary to perfecting a penalty-phase defense that complies with Fifth, Sixth and Eighth Amendment strictures. All of those

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travel plans have been indefinitely postponed. Rushing a trial date may result in our failure to complete our investigation and adequately prepare our penalty-phase witnesses in violation of Mr. Saipov's rights as a capital defendant. *See Douglas v. Woodford*, 316 F.3d 1079, 1089 (9th Cir. 2003) (finding counsel constitutionally inadequate where, among other things, "he did not adequately prepare the [penalty-phase] witnesses in order to present the material he did gather to the jury in a sufficiently detailed and sympathetic manner").

Holding the trial during a time when the court is restricting participation by certain members of the public may also violate Mr. Saipov's right to a public trial as guaranteed by the Sixth Amendment. Chief Judge McMahon has already issued an order restricting a wide swath of the public from entering the courthouse, including those who have recently visited certain countries, as well as individuals who have "fever, cough or shortness of breath." *In Re: Restrictions on Visitors to Courthouse*, 20 Misc. 00138 (Mar. 9, 2020). The list of restrictions is likely to grow as more and more places, like New Rochelle, experience outbreaks.

The Court should grant the defense's unopposed motion to vacate the April 20, 2020 trial date and set a date for an update from the parties. The parties also jointly request that the Court vacate the current March 30, 2020 pre-trial deadline for jury instructions, verdict sheets, and strikes for cause, and also vacate the March 31, 2020 final pre-trial conference.

Respectfully Submitted,

/s/ David Patton

David Patton, Esq.

Counsel for Sayfullo Saipov

Cc: Government Counsel